

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

FILED

2010 JUN 11 P 3:07

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY
CIVIL ACTION
No. 1:10-CV-158 DEPT. CLERK

Collier/Lee

WANDA KAY STEWART,

Plaintiff,

vs.

BILL R. JENNINGS, JR. d/b/a
B&L CONSTRUCTION CO. and
AUTO-OWNERS INSURANCE,

Defendant.

JURY DEMAND

NOTICE OF REMOVAL

Comes now the defendant, Owners Insurance Company, improperly named as Auto-Owners Insurance Company, and petitions this Court for removal of an action heretofore filed in the Chancery Court for Bradley County, Tennessee, and for grounds would show the Court as follows:

I.

The above named plaintiff has filed a Complaint and Summons in the Chancery Court for Bradley County, Tennessee, under Case No. 2010-CV-161, said action being filed on the 10th day of May, 2010, and a copy of said complaint being served on defendant Owners Insurance Company on May 24, 2010.

II.

The above lawsuit is an action wherein the plaintiff seeks recovery from defendant Bill Jennings d/b/a B&L Construction Company for breach of warranty and negligence related to the construction of a home at 3918 Holly Hill, NW, Cleveland, Tennessee. In

addition, plaintiff seeks recovery from Owners Insurance Company for recovery against an insurance policy allegedly insuring defendant Bill Jennings d/b/a B&L Construction Company. The plaintiff alleges that the damages from the alleged damage to the property "will cost in excess of \$80,000." A copy of the Complaint is attached hereto as Exhibit "A".

III.

This Notice of Removal is filed within the statutory period required by 28 U.S.C. §1446. There is diversity between the plaintiff and defendant Owners Insurance Company, but there is not diversity between plaintiff and defendant Bill Jennings d/b/a B&L Construction Company. However, defendant Bill Jennings has been fraudulently joined as there is no colorable basis for recovery against him. Since the amount in controversy exceeds the sum of Seventy Five Thousand (\$75,000.00) Dollars, exclusive of interest and cost, and there is complete diversity excluding the fraudulent joinder, removal is appropriate.

IV.

The plaintiff is a citizen and resident of Bradley County, Tennessee and is domiciled in Bradley County, Tennessee. Defendant, Owners Insurance Company, is a corporation organized and existing under the laws of the State of Michigan with its principal place of business in Lansing, Michigan. It is not incorporated in Tennessee and does not have its principal place of business in Tennessee.

V.

Defendant Bill Jennings d/b/a B&L Construction Company is a citizen and resident of

Bradley County, Tennessee and is domiciled in Bradley County, Tennessee. However, plaintiff has no right to bring a cause of action against defendant Jennings and no right of recovery pursuant to the United States Bankruptcy Code. Defendant Jennings on behalf of himself and as proprietor of B&L Construction filed for bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Tennessee under case number 1:08-bk-15917. Plaintiff was included in the bankruptcy petition as an unsecured creditor. Attached as Exhibit "B" is an excerpt from Schedule F of defendant Jennings bankruptcy petition.

Defendant Jennings was discharged from bankruptcy by United States Bankruptcy Judge R. Thomas Stinnett on January 27, 2009. Attached as Exhibit "C" is the Discharge of Debtor.

Since plaintiff was included as a creditor in defendant Jennings' bankruptcy and defendant Jennings was discharged, any claims by plaintiff against defendant Jennings have been discharged. Not only does plaintiff have no right of recovery against defendant Jennings, plaintiff's suit against defendant Jennings constitutes a violation of the automatic stay provision of the United States Bankruptcy Code.


VI

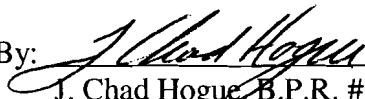
Given the fraudulent joinder, there is complete diversity of citizenship between the parties as required by 28 U.S.C. §1332. The amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars exclusive of interest and costs and is, therefore, within the statutory jurisdiction set forth at 28 U.S.C. §1332.

VII.

WHEREFORE, the defendant, Owners Insurance Company, respectfully requests the Court to accept removal of this cause from the Chancery Court for Bradley County, Tennessee, and to proceed with this action in accordance with the law.

BAKER, KINSMAN, HOLLIS, CLELLAND
& WINER, P.C.
701 Market Street, Suite 1500.
Chattanooga, TN 37402-4825
(423) 756-3333

By: 
N. Mark Kinsman, B.P.R. #6039
Attorney for Defendant Owners Insurance
Company

By: 
J. Chad Hogue, B.P.R. #025457
Attorney for Defendant Owners Insurance
Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this *Notice of Removal* upon the below named attorney either by messenger delivery or by depositing same in the U.S. Mail with sufficient postage attached thereto to ensure for proper delivery, addressed as follows:

William A. Harris, III
Miller & Martin, PLLC
832 Georgia Avenue, Suite 1000
Chattanooga, TN 37402

Bill Jennings
6211 Blue Springs Rd
Cleveland, TN 37311

This 11th day of June, 2010.

By: 